Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket 94-102
to Ensure Compatibility with Enhanced	)	
911 Emergency Calling Systems	)	
	)	
Amendment of Parts 2 and 25 to Implement	)	IB Docket 99-67
the Global Mobile Personal Communications	)	
by Satellite (GMPCS) Memorandum	)	
of Understanding and Arrangements; et al.	)	

REPLY COMMENTS OF NENA AND NASNA

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SUMMARY

While Phase I and Phase II implementation are challenging tasks, we cannot afford to wait until these are completed before dealing with new and emerging services whose users may expect to have enhanced access to 9-1-1. We need to plan for such access early in the service or product development cycles so that PSAPs are not constantly attempting to catch up.

There is ample legal authority in the Communications Act for the FCC to consider regulation, if needed, for the services and products embraced by this rulemaking. If there is substantial doubt about jurisdiction over a particular product or service, Congress should be asked to act. The Congressional aims of "coordination for interconnectivity" expressed in Section 256 of the Act, while not constituting additional legal authority, are a worthwhile blueprint for the kind of project management approach we believe the FCC should oversee.

We are gratified that most MSS providers acknowledge the value of intermediate call centers, and look forward to improving their integration into emergency call-taking systems. The same goes for telematics call centers, whose good work can be done better if more of the information received at the intermediate positions can be passed cost-effectively to PSAPs.

There is considerable support, as well, for improving the delivery of ANI and ALI from callers using MLTS. We cannot accept, however, the complete grandfathering of existing equipment or the claim that the job of workplace access to 9-1-1 is better accomplished through regulations of the Department of Labor's Occupational Safety and Health Administration.

The record is mixed as to whose responsibility should be the assurance of E9-1-1 access via resale, pre-paid calling and disposable phones. We apply to these and to other new and emerging services the fundamental principle that any reasonable facsimile of basic wire or wireless calling should be presumed capable of enhanced 9-1-1 access, with the provider bearing the burden of showing why that presumption cannot or should not be met.

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REPLY COMMENTS OF NENA AND NASNA

The National Emergency Number Association ("NENA") and the National Association of State Nine One One Administrators ("NASNA") hereby reply to the comments of others in the captioned proceeding.[1] Several commenters call for a pause before expanding the scope of enhanced 9-1-1 requirements, on the basis that implementation of Phase I and Phase II for currently covered licensees must be the singular task of the moment.[2] Some mistakenly cite the Hatfield Report for this cautionary proposition.

We agree, and have stated on this record, that implementing Phase I and Phase II for presently subject carriers is a complex task. But if we fail to look ahead to new services and products offering the promise or expectation of emergency calling and response, we risk discrediting 9-1-1 and inhibiting its use in conventional wire and wireless telephony. Development of new technologies won't wait while we finish other projects. We cannot afford

[1] Time for reply extended by Public Notice, DA03-623, released March 5, 2003.

[2] For example, Nextel at 1-2, 8; Motorola at 2; TIA at 4.

to play catch-up repeatedly, at huge additional costs in money and time. We need to build 9-1-1 early and proactively into business planning cycles. A careful reading of the Hatfield Report affirms the point.

The Hatfield Report recommended avoiding new requirements on currently covered licensees "during this critical stage of the rollout" of Phase I and Phase II. The Report also encouraged "coalescence around standardized interfaces." But it did not remotely suggest taking our eyes off future planning. To the contrary, the Report recommended that public safety "work with the industry . . . to prioritize the future evolution of wireline and wireless E911 in such a way that short term and long term priorities are properly balanced."[3] This rulemaking is an early step in that process.

Legal and Policy Tests for 9-1-1 Coverage

The Notice of Proposed Rulemaking ("Notice") in this proceeding tentatively adopts the same four-step policy analysis applied in 1996 to determine coverage under the original wireless E9-1-1 regulations. (Notice, ¶¶4, 13) In neither the included nor the excluded services was there much question of the Commission's authority to act. Since then, however, Congress has adopted the Wireless Communications and Public Safety of Public Safety Act of 1999 ("the 1999 Act"). The central directive of the statute is codified at 47 U.S.C.§251(e)(3):

> The Commission . . . shall designate 9-1-1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service.

[3] "A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services," prepared for the FCC by telecommunications consultant Dale N. Hatfield, October, 2002, at 40.

While the Notice (¶11) asks commenters to analyze the FCC's legal authority over each of the services or products proposed for possible application of E9-1-1 regulation, there is no discussion of whether or how the 1999 Act affects the analysis.

We believe the legal effect of the 1999 Act is substantial. Congress did not use the words of the first prong of the Commission's test: "real-time, two-way voice service that is interconnected to the public switched network on either a stand-alone basis or packaged with other telecommunications services." Congress instead applied the 9-1-1 designation to "wireline and wireless telephone service." Accordingly, we believe the threshold question now must be: Does the service or product involve wireline or wireless telephone service?

The Communications Act does not define "telephone service" in the general way expressed by Congress in 1999. "Telephone exchange service" and "telephone toll service" are defined only by reference to a historic configuration of the wireline public switched network. 47 U.S.C.§153 (47) and (48). "Radio communication" is the closest entry in Section 3, but is not expressed in terms of telephony. At Section 332(d) of the Communications Act, the terms "commercial mobile service" and "interconnected service" provide a basis for the first prong of the Commission's 1996 four-part test, but they do not exhaust the possible meanings to be attached to "wireless telephone service" in the 1999 Act.

In Section 6, subsection 4 of the 1999 Act, "wireless carrier" is defined. But this reference is not, we think, intended to stand for "wireless telephone service." Instead, it is meant to describe the recipient of "parity of protection" in Section 4. There, the use of FCC regulatory requirements as a distinction makes perfect sense. Those carriers compelled to provide wireless 9-1-1 service are precisely the ones who should receive limited liability protection for that

mandated undertaking– measured by the comparable safeguards afforded wireline carriers in state law.

In sum, Congress in 1999 used terms -- wireline and wireless telephone service -- that are not expressly defined in the 1999 Act or the Communications Act. This allows the Commission some freedom of interpretation, but the task of construing the chosen terms cannot be avoided. In deciding which of the new services or products are to come within the scope of the enhanced 9-1-1 regulations, the FCC must decide their relationship to wireline or wireless telephone service.[4]

FCC Authority Over Equipment. We agree with Nextel (Comments, 11) that "the Commission has ample legal authority to assert . . . jurisdiction over wireless equipment manufacturers." The contrary arguments of TIA and several automakers and other telematics interests are unpersuasive.

TIA's show case is *Motion Picture Association of America, Inc. v. FCC,* cited at page 11 and following of its Comments. There, the U.S. Court of Appeals for the D.C. Circuit found the FCC without authority to issue "video description" rules in aid of access to TV programming by blind and visually-impaired persons. The ruling was based on two ingredients not present here: (1) a specific distinction, in Section 713 of the Communications Act, 47 U.S.C.§613, between "closed captioning" -- for which rules were to be issued -- and video description, which was to be merely the subject of a report to Congress; and (2) the implication in the latter of "program content," an element of authority not found in Sections 1 or 2 of the Act. In short, *Motion Picture Association* is far removed from the ground of wireless equipment regulation.

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[4] The Commission has published a glossary in which telephony is said to describe "the science of transmitting voice over a telecommunications network." *A Glossary of Telecommunications Terms,*1998, at 35.

TIA strains mightily (Comments, 15, n.43), but without success, to explain how the Commission could have adopted the "call completion" rule at 47 C.F.R.§22.921, which instructed both manufacturers and carriers about enabling wireless handsets to "roll over" to a competing carrier if a 9-1-1 call could not be completed on a subscriber's home carrier. TIA explains that, despite the FCC's direct application of the equipment authorization process to handset manufacturers, the regulation is "ultimately the cellular licensee's responsibility." *Id*. The Commission thought otherwise: "We will implement this rule through an equipment manufacturing requirement and our equipment authorization process."[5]

As noted in our Comments in this scope rulemaking, explicit grants of authority in Title III, as well as precedent in Part 68, should provide adequate legal foundation for most of the extensions of E9-1-1 rules under consideration here. We are most attracted, however, to a section in Title II which disclaims any additional delegation of authority but sets out a vision of Commission-supervised collaboration by many interested parties. Section 256(a) and (b) are worthy of quotation in their entirety:

Section 256. Coordination for interconnectivity

(a) Purpose

It is the purpose of this section -

(1) to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service through -

[5] Second Report and Order, CC Docket 94-102, 14 FCC Rcd 10954 (1999), ¶88. TIA and virtually all the major wireless equipment manufacturers played a positive role in the adoption of the rule, and none raised at the time any legal impediment.

(A) coordinated public telecommunications network planning and design by telecommunications carriers and other providers of telecommunications service; and

(B) public telecommunications network interconnectivity, and interconnectivity of devices with such networks used to provide telecommunications service; and

(2) to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

(b) Commission functions

In carrying out the purposes of this section, the Commission -

(1) shall establish procedures for Commission oversight of coordinated network planning by telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service; and

(2) may participate, in a manner consistent with its authority and practice prior to February 8, 1996, in the development by appropriate industry standards-setting organizations of public telecommunications network interconnectivity standards that promote access to -

(A) public telecommunications networks used to provide telecommunications service;
(B) network capabilities and services by individuals with disabilities; and
(C) information services by subscribers of rural telephone companies.

If this Congressional map from 1996 could be followed with good will by all 9-1-1 stakeholders, the path to future 9-1-1 enhancements might avoid the bogs of legal disputation encountered in the past. As if to remind us of the application of the above principles to 9-1-1, the Findings and Purposes (Section 2) of the 1999 Act employed remarkably similar language.

MSS Comments

MSS voice telephony providers Globalstar, ICO Global and MSV support the Notice's tentative conclusion favoring relay of emergency calls to PSAPs through call centers, while Stratos and Inmarsat claim their systems do not meet, and are not planned to meet, the four-part test of wireless E9-1-1 coverage.[6] We agree with MSV that formation of some kind of advisory committee or surrogate composed of balanced representation should look at the future path to improved satellite phone emergency calling and response. One question we have is whether an MSS carrier's ancillary terrestrial service could be readied for Phase II sooner than its conventional satellite-enabled transmissions. Such an advisory group also could examine Inmarsat's implication that any E9-1-1 requirements should fall on its Land Earth Station Operator ("LESO") customers and not on Inmarsat as a wholesaler of space segment capacity.

Telematics Comments

Auto manufacturers and their associations, as well as ComCARE, are against regulating telematics providers or equipment at this time. Some of the views are couched in terms of deferral pending further study, others are more adamant that the Communications Act in its present form gives the FCC no authority where -- unlike OnStar's "Personal Calling" service (OnStar Comments, 5-6) -- no direct connection to the public switched telephone network is offered. One of the latter, BMW, suggests (Comments, 4) that its call center employees are better trained than PSAPs to take certain specialized communications such as ACN. Toyota (Comments, 19-20) actively opposes any mandate for the electronic relay of emergency information to PSAPs.

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[6] Another satellite commenter, Final Analysis, does not offer voice service, while a vendor, SkyBitz, offers possible ALI solutions for MSS providers without taking a position the merits of imposing E9-1-1 regulations.

One of Toyota's contentions -- that many PSAPs are not prepared for such relays -- will become increasingly wrong as 9-1-1 authorities upgrade to Phase II. Following that logic would undermine current wireless E9-1-1 regulation of cellular and PCS carriers as well. In the absence of altruism or a spirit of public interest, locating wireless callers will depend on economic incentives or governmental mandates. While NENA and NASNA would prefer private altruistic or commercial motives to succeed in place of public fiat, these were not sufficient to launch wireless E9-1-1 and they may not suffice to extend callback and caller location to other wireless services and devices.

We must be forward-looking and address telematics as an E9-1-1 issue before it becomes a crisis for the 911 community. Assuring a well designed interface of telematics with E9-1-1 should be a Commission priority. We believe there are cost-effective means of further integrating telematics call center operations with the public safety networks that are obliged to finish the jobs of emergency response handed off to them by private call centers.[7] We look forward to examining these methods in a representative setting of interested parties. We are not predisposed to regulatory outcomes but are realistic in anticipating that regulation may be required.

Multi-Line Telephone Systems

We are gratified by the record of comments supporting the joint public safety/industry proposal submitted in July of 2001 by NENA and APCO.[8] That proposal consisted of recommended changes or additions to Parts 64 and 68 plus model state legislation. The

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[7] Exhibit A describes a lifesaving ACN integration in the Houston, Texas area.

[8] Supporters include ACUTA, Intrado, NEC, Avaya and the Washington State E9-1-1 Program. A notable dissenter is Ad Hoc Telecommunications Users Committee ("Ad Hoc TUC"), which had supported the 1997 consensus proposal on which the FCC took comments but never acted.

implication in the model legislation is that any federal rules would not completely occupy or preempt the field. However, Avaya (formerly Lucent, Comments, 2-4) calls for federal preemption of inconsistent state or local requirements. Other of the supporters mention qualifications. For example, UTC wants complete immunity (grandfathering) for existing MLTS equipment, or a seven-year grace period at least. NEC believes MLTS owners or their agents must have direct access to local exchange carrier data bases, in order to minimize the burden of keeping internal telephone location records up to date.

We believe compromises are possible on the issue of federal supremacy. It may be important for certain Part 64 and Part 68 rules to apply consistently across the country, but not so critical to have uniformity in certain aspects of the model legislation. It appears that the "Effective Date" and "Alternative Methods" proposals in the model legislation go far to address the concerns of UTC and ACUTA on transition to full compliance for after-installed equipment and "private" emergency response in campus settings.[9]

We cannot accept, however, Ad Hoc TUC's assertions that the issue of 9-1-1 access through MLTS on business premises belongs with the federal Occupational Safety and Health Administration or its state counterparts rather than the FCC. Ad Hoc TUC expressed the same view in negotiations during 1996 and 1997, yet found its way to a 1997 compromise that is similar in many respects to the proposed model legislation. In our reading, the existing OSHA

[9] We cannot accept UTC's call for complete grandfathering of existing systems, or its concept of "flexibility" beyond what is indicated in our Part 68 proposed rules. These proposals are markedly different from the 1997 "Consensus" and come with the approval of MMTA, Avaya (formerly Lucent), Siemens and Nortel, among others. (Comments of NENA and NASNA, February 19, 2003, Exhibit B.

rules are simply not detailed or comprehensive enough to provide the help public safety responders need.[10]

Resale, Pre-Paid Calling, Disposable Phones

These different issues are linked by their dependence on an underlying service provider that has complied or will comply with existing E9-1-1 rules. The problem is how to assure that the service provider's capability is available to the user of resold service. Some wireless carriers and location vendors (AT&T Wireless, Sprint, CTIA, TruePosition) suggest direct regulation of resellers, particularly where the handset solution to location determination confronts the reseller with a choice of equipment. The aim would be to encourage or require distribution of handsets that make full use of the underlying network's capabilities. One reseller desiring to maintain its independence, Virgin Mobile, appears to agree. Most resellers, however (AirCell, TracFone, the telematics suppliers) oppose direct regulation.

Although our initial Comments tended toward reliance on underlying carriers to police resale compliance with 9-1-1 call completion, call-back and caller location, we are rethinking. It is fair to say we believe someone must take responsibility but we are not sure which business entity should do so; and the assignment of responsibility may well vary according to the characteristics of the wireless facilities network and the nature of its business dealings with resellers. Not the least of our concerns -- which only a few states have addressed -- is how pre-paid and disposable phone customers will be surcharged for support of the total 9-1-1 enterprise.

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[10] For example, 29 CFR§1910.268 applies to work conditions in "telecommunications centers" and in other premises where the essential business is telecommunications. It has little or nothing to say about reporting of and responding to emergencies in workplaces where telecommunications is simply a tool in the conduct of some other enterprise. Likewise, emergency escape routes are important, but they do not address the central issue in enhanced 9-1-1: how to locate and call back, if necessary, a person who cannot escape unaided. *See*, Ad Hoc TUC Comments at 11, n.29.

For the reasons given earlier, we are not persuaded that the FCC's authority under the Communications Act is so scant as to preclude direct regulation. But if a contrary legal view prevails, we will seek any necessary relief from Congress.

Emerging Services and Devices

There is little commentary on the internet dimensions of alternative telephony. Only Worldcom cautions that E9-1-1 obligations should not be imposed under the prevailing condition of what it calls an antiquated wireline network. While we sympathize with that view, we are not sure that addressing "voice over IP" -- as NENA is doing -- can wait for changes in a historic public switched network that (a) remains substantially reliable even if outmoded and (b) is not going to change all at once, in any event.

As we understand the situation now from several VOIP providers, users who dial 9-1-1 will receive nothing but a "fast busy." We are told that in April, 2003, such attempts will be translated into a 10-digit dialing of an appropriate PSAP. We note one comment on this record that suggests improved short and medium-term solutions in the 2003-2004 time frame.[11] Not discussed is the degradation of service that occurs for a wireline customer that switches to a VOIP service and requests porting of its old number to the new service.

We begin from the principle that any reasonable approximation of local exchange telephony should be capable of E9-1-1 ANI and ALI. We are concerned, for example, that internet telephony users may all too soon come to expect that they can be found and called back if 9-1-1 is dialed. We will bring to any advisory committee or other collaborative public safety-industry effort the work of our own "Future Path" planning, in the hope of integrating alternative telephony into 9-1-1 sooner rather than later.

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[11] Henning Schulzrinne, February 28, 2003, 10-11.

CONCLUSION

For the reasons discussed above, NENA and NASNA reiterate the approach suggested in the Summary of their initial Comments:

> The Commission generally prefers to set performance standards and let those subject to the requirements choose how to fulfill them. In the case of 9-1-1, the agency's guidance should be more directive and its oversight more persistent. NENA and NASNA suggest a "project management" approach in which objectives and timetables are set within a project plan produced by stakeholders with FCC guidance. The means and technical standards for meeting the objectives on time can be negotiated by the stakeholders, but under FCC supervision.

Some transitional steps can be taken now, as we have indicated, to better integrate MSS and telematics systems into 9-1-1 networks. Similarly, the MLTS issues are positioned for decision after long delay. There may be little to add through project management in the case of resale, pre-paid calling and disposable phones. Instead, these issues may simply require a realistic assessment of jurisdiction. By its nature, however, the topic of "emerging services and devices," in which we would include the longer-term outlook for MSS and telematics, will profit from the kind of collaborative effort outlined above.

Respectfully submitted,

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March 25, 2003

EXHIBIT A

Extract from Testimony of NENA President John Melcher to Senate Communications Subcommittee, March 5, 2003

Another shining example of technology and E9-1-1 is here with me today in the gallery Officer Chris Murray of the Pasadena, Texas Police Department. Officer Murray's life has returned to normal after a potentially fatal accident, thanks to the deployment of E9-1-1, Automatic Crash Notification (ACN) life saving technologies.

Two days after Christmas, on the evening of December 27, 2002, Officer Murray was returning to the station after completion of his patrol duties. Driving his police cruiser, which was recently outfitted with a prototype telematics crash detection module, he temporarily lost control of his vehicle and veered off the roadway. Attempting to correct his slide, he turned his vehicle back on to the roadway, but the speed of the vehicle along with slippery conditions made it impossible for him to gain full control. Instantly he was catapulted across the roadway, nose-diving into a drainage ditch, flipping the vehicle, smashing into a utility pole and finally coming to rest upside down on the roadway. Unconscious, inverted and trapped, Officer Murray lay waiting for help to arrive.

Previous to impact, Officer Murray had been in radio contact with his patrol dispatchers. From the dispatcher perspective, it was obvious that something had gone terribly wrong. Officer Murray wasn't responding on his radio. However, the recently deployed telematics crash detection module was. Within seconds of the incident, detailed information providing the exact location of the event, the point of impact, along with an open communications channel was shared on the 9-1-1 network infrastructure with the PSAP receiving all the relevant data on the calltaker's screen. The Life Flight team was immediately dispatched. Flown to the Trauma

Center at Houston's Hermann Hospital, Officer Murray remained in and out of consciousness for several hours. After regaining consciousness several hours later, the doctors said that it was the speed of finding him and getting him to the hospital that prevented serious injuries.

All this was possible because Officer Murray's vehicle had been equipped with life-saving technology and the 9-1-1 network was able to receive and share detailed location and critical crash information with multiple responders.